

June 30, 2017

SUBMITTED VIA FIRST CLASS MAIL AND ELECTRONIC FORM ON EPA HEADQUARTERS WEBSITE BY
<https://foiaonline.regulations.gov/foia/action/public/home>

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request

Dear Sir or Madam:

Conservation Law Foundation (CLF) and Charles River Watershed Association (CRWA) hereby request the records described below pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 *et seq.* CLF and CRWA request disclosure of all requested records below including any and all nonexempt portions of records that are otherwise determined to be exempt from review under the FOIA pursuant to 5 U.S.C. § 552(b). *Wightman v. Bureau of Alcohol, Tobacco & Firearms*, 755 F.2d 979, 983 (1st Cir. 1985).

CLF and CRWA request the following:

- All records concerning, considering, or in any way related to the decision or decision-making process by EPA to stay the General Permits for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems in Massachusetts, Authorization to Discharge under the National Pollutant Discharge Elimination System (“MA MS4 Permit”), issued April 4, 2016, including but not limited to EPA records sent or received internally or externally, internal agency memoranda and all drafts of internal agency memoranda, meeting notes and minutes, notes and summaries of conversations and interviews, reports, studies, internal and external correspondence, and records of internal and external correspondence;
- All records concerning, considering, or in any way related to settlement, mediation, or alternative dispute resolution regarding appeals/petitions of the MA MS4 Permit, from May 1, 2016 to the present, with the Massachusetts Coalition for Water Resources Stewardship, the Center For Regulatory Reasonableness, the Town of Franklin, MA, the City of Lowell, MA, the National Association of Home Builders, or the Home Builders Association of Massachusetts, or their respective representatives, including but not limited to EPA records sent and/or received, internal agency memoranda and

all drafts of internal agency memoranda, meeting notes and minutes, notes and summaries of conversations and interviews, internal and external correspondence, and records or internal and external correspondence;

- All communications between May 1, 2016 and the present between EPA Headquarters and the Massachusetts Coalition for Water Resources Stewardship, the Center For Regulatory Reasonableness, the Town of Franklin, MA, the City of Lowell, MA, the National Association of Home Builders, or the Home Builders Association of Massachusetts, or their respective representatives, pertaining to the MA MS4 Permit, including but not limited to emails, letters, meeting notes and minutes, notes and summaries of conversations and interviews, and any other correspondence or records of correspondence;
- All communications between May 1, 2016 and the present between EPA Headquarters and anyone at the Massachusetts Department of Environmental Protection concerning, considering, or in any way related to the MA MS4 Permit, including but not limited to emails, letters, meeting notes and minutes, notes and summaries of conversations and interviews, and any other correspondence or records of correspondence.

If possible, please provide this information in electronic format. We look forward to a response and determination from your office within twenty working days of receipt of this request consistent with 5 U.S.C. § 552(a)(6) and 40 C.F.R. § 2.104. If this request is denied in whole or in part, provide at a minimum: (1) a detailed index/list of the records withheld, including the name of the record, the subject of the record, the author of the record, and the date of the record; and (2) EPA's basis for withholding the records. *Church of Scientology Int'l v. U.S. Dep't of Justice*, 30 F.3d 224, 228 (1st Cir. 1994); *Vaughn v. Rosen*, 484 F.2d 820, 823-28 (D.C. Cir. 1973), *cert. denied* 415 U.S. 977 (1974).

Fee Waiver Request

Because CLF and CRWA work on behalf of the public interest and this FOIA request is made in furtherance of the public interest, we request a waiver of any and all fees associated with the disclosure of records pursuant to this request. The FOIA and EPA's regulations provide that records will be furnished at reduced or no charge when disclosure "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l).

CLF is a nonprofit, member-supported legal and policy advocacy organization which employs advocates with expertise in many fields, including the Clean Water Act and protection of water resources. Across five New England states, CLF employs advocates with advanced professional degrees and experience in law, economics, resource management, and science. CLF has played a critical role in the preservation and enhancement of water quality in Massachusetts and New England as a whole, and has been a leader in addressing the environmental problems posed by water pollution.

CRWA, a nonprofit environmental research and advocacy organization, works to protect and restore the Charles River and its watershed. CRWA conducts monthly water quality monitoring that is relied on by EPA in its annual Charles River Report Card, advocates for effective permits, decisions and approvals to protect both water quality and quantity, conducts trainings, public outreach and education on stormwater runoff and works with agencies, municipalities, institutions, businesses and citizens to reduce stormwater runoff.

Records regarding EPA's decision to stay the effective date of the MA MS4 Permit contain important information pertaining to factual and policy issues concerning stormwater pollution. CLF and CRWA plan to share the information furnished pursuant to this request with the public to further the public's understanding of EPA's decision and to increase transparency regarding EPA's decision-making process. Sharing these materials is in the public interest because it will contribute significantly to the public's understanding of the MA MS4 Permit, the request for a stay, the EPA's decision to grant that stay, the processes and substantive data supporting that decision, as well as potential implications of that decision that were discussed and considered internally. Sharing these materials will also increase public awareness and knowledge pertaining to what information EPA considers when making determinations and what sort of process and communications occur behind the scenes prior to public announcements.

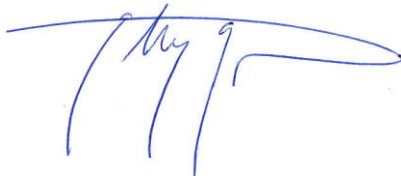
CLF and CRWA routinely communicate with the public through a variety of media, including newsletters, emails, social media platforms including Twitter and Facebook, our websites, and by blogging. CLF and CRWA further share information with the public by providing comments at public hearings, and by speaking at conferences and to community groups. CLF and CRWA prepare information summaries and communications materials to educate the public about health and environmental issues, and specifically, provide outreach to the public regarding stormwater runoff and health and environmental implications. CLF and CRWA additionally educate the public about governmental processes, administrative actions, and opportunities for public participation. Through these and other avenues, we intend to disseminate the information requested to enhance public understanding of the operations or activities of EPA.

Neither CLF nor CRWA has any commercial interest that will be furthered by this disclosure. Both are tax-exempt 501(c)(3) corporations, have no parent corporations, and are not corporations in which any person or entity owns stock. CLF and CRWA will not derive income or other benefits from use of the requested information. Consequently, a fee waiver is appropriate under FOIA and EPA regulations.

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees. I look forward to your response to this Request within twenty (20) business days of receipt, in accordance with 40 C.F.R. § 2.104(a).

Thank you in advance for your assistance with this request. Should you have any questions about this request, please contact Emily Green by phone at 207-210-6439, or by email at egreen@clf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Green', with a long horizontal stroke extending to the right.

Emily K. Green
Staff Attorney
Conservation Law Foundation
53 Exchange Street, Ste 200
Portland, ME 04101
Ph: 207-210-6439

Margaret Van Deusen
Deputy Director and General Counsel
Charles River Watershed Association
190 Park Road
Weston, MA 02493
Ph: 781-788-0007, ext. 234